

DEPARTMENT OF FOOD AND AGRICULTURE

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March 21, 2007

STZ-07-006

TO: TO WHOM IT MAY CONCERN

The following regulations were filed with the Secretary of State on March 15, 2007 and will become effective on April 15, 2007.

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
CHANGES IN THE REGULATIONS**

**Title 3. California Code of Regulations
Article 2.1. Administrative Civil Penalty Guidelines**

1371. Notice of Proposed Action and Disposition

(a) Before a civil penalty is levied pursuant to Section 43003 or Section 885 of the California Food and Agricultural Code, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of the proposed penalty. The person shall be allowed to review any evidence related to the matter that is in the possession or control of the county agricultural commissioner or the Department of Food and Agriculture. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice may be served to the person charged by certified mail to the address provided on the person's licensing, registration, and/or certification on file with the county agricultural commissioner or the Department of Food and Agriculture. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the commissioner's hearing and the person shall be allowed to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(1) The hearing shall be conducted by an unbiased hearing officer who has not served as an investigator, prosecutor or advocate regarding the proposed action.

(2) A record shall be made of the proceedings.

(3) A decision shall be rendered by the County Agricultural Commissioner and shall be based only upon evidence presented to the hearing officer during the hearing.

(b) If a respondent in an administrative action agrees to pay the proposed penalty, a signed stipulation with the payment of the proposed administrative penalty shall be returned to the county agricultural commissioner within 45 days of the postmark of the notice of proposed action.

(c) If an administrative hearing is requested, a final decision and order shall be made by a hearing officer within 60 days of the conclusion of the hearing. This order will be mailed to the address provided by the respondent. Any penalty imposed shall be due and payable within 45 days of the postmark of such order, unless the respondent timely files a written appeal to the secretary.

Note: Authority cited: Sections 407 and 42681, Food and Agricultural Code.
Reference: Sections 401, 885, and 43003, Food and Agricultural Code.

1371.1 Penalty Guidelines.

In applying Section 885 and Section 43003 of the California Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and amount of the penalty.

(a) For the purposes of this section, violation classes are designated as "Serious", "Moderate" and "Minor".

(1) "Serious". Violations which preclude or significantly interfere with enforcement, or those which cause significant false, misleading or deceptive business practices; or repeat violations of sub-paragraph (2) that occurred within a two-year period and which resulted in an action and subsequent penalty.

(2) "Moderate". Violations which undermine enforcement, or those in which there is a potential for intermediate level of consumer or competitive harm; or repeat violations of sub-paragraph (3) that occurred within a two-year period and which resulted in an action and subsequent penalty.

(3) "Minor". Violations that have minimal adverse effect on consumers or equitable competition in the marketplace.

(b) Table A shall be used to establish the level of severity of a particular violation and the corresponding penalty range for "Serious", "Moderate" and "Minor" violation classes. Except where specific violation parameters are provided, the violation column in Table A is an abbreviated description of the corresponding section in the California Food and

Agricultural Code, Division 1, Part 1, Chapter 8. Agriculture Theft Prevention; and
 Division 17. Fruit, Nut and Vegetable Standards.

Note: Authority cited: Sections 407 and 42681, Food and Agricultural Code.
Reference: Sections 401, 885, and 43003, Food and Agricultural Code.

1371.2. Administrative Civil Penalties for Food and Agriculture Violations

Table A

Section I – Provisions of Division 1 and of Division 17 Not Separately Specified
For a first violation, a fine of not more than \$500.
For a second or subsequent violation, a fine not less than \$100 or more than \$1,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Minor Violation</u>	<u>Moderate or Subsequent Violation</u>	<u>Serious or Subsequent Violation</u>
		<u>\$50 - \$150</u>	<u>\$151 - \$500</u>	<u>\$501 - \$1,000</u>
<u>1. FAC 861</u>	<u>Failure of seller to provide, buyer to obtain, or transporter to possess a record showing proof of ownership</u>			
<u>2. FAC 862</u>	<u>Failure to make proof of ownership available for inspection; failure to include required information in the record</u>		<u>X</u>	
<u>3. FAC 864</u>	<u>Falsification of any information in a record intended to show proof of ownership</u>		<u>X</u>	
<u>4. FAC 865</u>	<u>Failure to retain a copy of the record for a period of 60 days after delivery</u>			
<u>5. FAC 42792.1</u>	<u>Unlawful use of a county certification stamp or device</u>		<u>X</u>	
<u>6. FAC 42884</u>	<u>Delivery of fruits, nuts or vegetables under disposal order to other than designated destination</u>		<u>X</u>	
<u>7. FAC 42885</u>	<u>Disposal of fruits, nuts or vegetables under disposal order prior to release</u>		<u>X</u>	
<u>8. FAC 42886</u>	<u>Disposal of fruits, nuts or vegetables under disposal order in a manner or for a purpose other than as ordered</u>		<u>X</u>	
<u>9. FAC 42941</u>	<u>Failure of fruits, nuts or vegetables to conform to</u>			

CCR 1359	provisions of this division or regulations promulgated thereto Container labeling: no declaration of responsibility	*Second violation of same regulation		
10. FAC 42942	Deceptive pack, lot load or display of fresh or dried fruits, nuts or vegetables	X		
11. FAC 42943	Mislabeling or misleading statement on container or label			
12. FAC 42944	Deceptive or misleading statements in any manner			
13. FAC 42946	Failure to pack the same numerical count in each layer	X		
14. FAC 42947	Failure to ensure that the contents of lower layers are of same kind, quality and proportion as top or exposed layers	X		
15. FAC 42950	Failure of 90% to be free of insect injury, worms, mold or decay (specific standards not otherwise established)	X		
16. FAC 43033	Removal of tag or notice from lot under abatement		X	
17. FAC 43331	Use or disposal of fruits, nuts or vegetables under permit other than by the manner or for the purpose permitted		X	
18. FAC 43332	Failure of permit to accompany fruits, nuts or vegetables transported under permit	X		
19. FAC 43333	Selling or offering fruits, nuts or vegetables failing to meet standards to person requiring permit who has no permit	X		

Section II – Provisions of Division 17 Separately Specified
 For a first violation, a fine of not more than \$3,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Moderate Violation</u> \$250 - \$1,000	<u>Serious or Subsequent Violation</u> \$1,001 - \$3,000
1. FAC 42945	Unlawful removal or disposal of fruits, nuts or vegetables with warning tag or notice attached or removal of tag or notice without written permission or under direction of enforcing officer		
2. FAC 42948	Refusal to submit fruits, nuts or vegetables to inspection of		

	<u>enforcing officer</u>		
<u>3. FAC 42949</u>	<u>Alteration of certificate of inspection, notice of violation, report, statement, or other document issued by an enforcing officer</u>		
<u>4. FAC 42951</u>	<u>Adulteration of any solution or chemical or alteration of any instrument or device provided to an enforcing officer for use in determining compliance with this division</u>		

AVOCADOS

<u>5. FAC 44971(b)</u>	<u>Failure to certify avocados as complying with maturity and quality provisions established by regulation</u>		
<u>6. FAC 44972</u>	<u>Unlawful shipment or sale of any container of avocados which does not bear the official stamp required by law and regulation</u>		
<u>7. FAC 44974(c)</u>	<u>Failure to comply with the inspection and certification requirements of FAC Chapter 9, Avocados</u>		
<u>8. FAC 44986</u>	<u>Unlawful use of avocado container certification stamp; refusal to surrender certification stamp to director's authorized agent; counterfeit or alter or use any altered certification stamp</u>		

Section III – Provisions of Division 17 Separately Specified – Avocados Only
Avocados Worth \$500 or More

For a first violation involving avocados worth \$500 or more, or
For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Moderate Violation</u>	<u>Serious or Subsequent Violation</u>
		<u>\$250 - \$1,000</u>	<u>\$1,001 - \$5,000</u>
<u>1. FAC 44973</u>	<u>Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation</u>		
<u>2. FAC 44982</u>	<u>Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records</u>		
<u>3. FAC 44983</u>	<u>Falsification of record or information required to be kept pursuant to FAC 44982</u>		

4. <u>FAC 44984</u>	<u>Failure to allow inspection of records required to be kept pursuant to FAC 44982</u>		
5. <u>FAC 45031</u>	<u>Failure to possess a record of proof of ownership for avocados</u>		
6. <u>FAC 45034</u>	<u>Falsification of any information in a record intended to show proof of ownership for avocados</u>		
7. <u>FAC 45035</u>	<u>Failure to retain a copy of the proof of ownership record for avocados for one year after sale</u>		

Section III – Provisions of Division 17 Separately Specified – Avocados Only
Avocados Worth Less Than \$500

For a first violation for avocados worth less than \$500, a fine of not more than \$500

For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Moderate Violation</u> <u>\$100 - \$250</u>	<u>Serious or Subsequent Violation</u> <u>Initial: \$251-\$500</u> <u>Subsequent: \$251-\$5,000</u>
1. <u>FAC 44973</u>	<u>Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation</u>		
2. <u>FAC 44982</u>	<u>Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records</u>		
3. <u>FAC 44983</u>	<u>Falsification of record or information required to be kept pursuant to FAC 44982</u>		
4. <u>FAC 44984</u>	<u>Failure to allow inspection of records required to be kept pursuant to FAC 44982</u>		
5. <u>FAC 45031</u>	<u>Failure to possess a record of proof of ownership for avocados</u>		
6. <u>FAC 45034</u>	<u>Falsification of any information in a record intended to show proof of ownership for avocados</u>		
7. <u>FAC 45035</u>	<u>Failure to retain a copy of the proof of ownership record for avocados for one year after sale</u>		

Note: Authority cited: Sections 407 and 42681, Food and Agricultural Code.

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Page 7

Reference: Sections 401, 861, 862, 864, 865, 42792.1, 42884, 42885, 42886, 42941, 42942, 42943, 42944, 42945, 42946, 42947, 42948, 42949, 42950, 42951, 43033, 43331, 43332, 43333, 44971, 44972, 44973, 44974, 44982, 44983, 44984, 44986, 45031, 45034, and 45035, Food and Agricultural Code.

Sincerely,

Kevin Masuhara, Program Supervisor
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Inspection Services

KM/ss

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